

Meeting Minutes

Public Body Procurement Workgroup

Meeting # 1

Thursday, July 14, 2022, 9:30 a.m.
Conference Rooms C, D, and E
James Monroe Building
101 N 14th St, Richmond, Virginia 23219

<http://dgs.virginia.gov/dgs/directors-office/procurement-workgroup/>

The Public Body Procurement Workgroup (the Workgroup) met in-person in Conference Rooms C, D, and E in the James Monroe Building in Richmond, Virginia, with Sandra Gill, Deputy Director of the Department of General Services, presiding. The meeting began with remarks from Joe Damico, Director of the Department of General Services, followed by presentations, discussion, and public comment. Materials presented at the meeting are available through the [Workgroup's website](#).

Workgroup members and representatives present at the meeting included Sandra Gill (Department of General Services), Vernice Love (Department of Small Business and Supplier Diversity), Dan Wolf (Virginia Information Technologies Agency), Lisa Pride (Virginia Department of Transportation), Jason Saunders (Department of Planning and Budget), Patricia Innocenti (Virginia Association of Governmental Purchasing), John McHugh (Virginia Association of State Colleges and University Purchasing Professionals), Leslie Haley (Office of the Attorney General), Andrea Peeks (House Appropriations Committee), Mike Tweedy (Senate Finance and Appropriations Committee), and Joanne Frye (Division of Legislative Services).

I. Call to Order; Remarks by Department of General Services

Joe Damico, Director
Department of General Services

Sandra Gill, Deputy Director
Department of General Services

II. Overview of Workgroup Authority and Duties

Jessica Budd, Staff
Department of General Services

Jessica Budd, staff to the Workgroup, provided an overview of the language in the Appropriations Act that establishes the Workgroup, its authority and duties, and its membership. She explained that the Appropriations Act language directs the Department of General Services to lead, provide administrative support to, and convene an annual public body procurement work group to study and review proposed changes to the Code of Virginia in the areas of non-technology goods and services, technology goods and services, construction, transportation, and professional services procurements. She described the three avenues through which bills or potential legislation may be referred to the Workgroup for study, explained that the Appropriations Act language directs the Workgroup to hear from stakeholders identified by the patron of the referred legislation and other interested parties, and described the factors that the Appropriations Act language directs the Workgroup to consider when studying referred legislation. Finally, Ms. Budd explained that the Appropriations Act language establishes the membership of the Workgroup and she listed the Workgroup members.

III. Introduction of Workgroup Members, Representatives, and Staff

IV. Review of Proposed Work Plan

Jessica Budd, Staff **Department of General Services**

Ms. Budd provided an overview of the Workgroup's proposed work plan for the year. She explained that four total meetings are planned for the year, and stated that the plan for the first meeting is to begin diving into the two bills that the Workgroup has been directed to study this year by the 2022 Regular Session of the General Assembly.

Ms. Budd gave a brief overview of the first bill, SB 550 from Senator Bell, and explained that the second enactment clause of the bill directs the Workgroup to review whether the issue of nonpayment between general contractors and subcontractors necessitates legislative corrective action and report its findings and any legislative recommendations to the General Assembly on or before December 1, 2022. She noted that Senator Bell would be appearing before the Workgroup shortly to provide more information on SB 550 and his hopes for the Workgroup's study of the bill.

Ms. Budd then gave a brief overview of the second bill, SB 575 from Senator Mason, and explained that the third enactment clause of the bill directs the Workgroup to evaluate the appropriateness of requiring all agencies of the Commonwealth to use a total cost of ownership (TCO) calculator prior to purchasing or leasing any medium-duty or heavy-duty vehicles. She stated that the bill directs the Workgroup to consult with relevant stakeholders, including at least one medium-duty or heavy-duty vehicle technology provider with experience in real-world deployments, and consider (a) the current commercial market for medium-duty and heavy-duty electric vehicles; (b) the unique characteristics of medium-duty and heavy-duty vehicles, including charging infrastructure and operational duty cycles; (c) the potential volume of medium-duty and heavy-duty vehicles purchased by DGS and agencies of the Commonwealth; (d)

the availability of public TCO calculators for medium-duty and heavy-duty vehicles and their suitability for use by DGS and agencies of the Commonwealth; and (e) any other information it determines relevant to its evaluation. She noted that the bill requires the Workgroup to report its findings and any recommendations to the Chairmen of the House Committee on General Laws and the Senate Committee on General Laws and Technology on or before December 1, 2022. She shared that Senator Mason's Chief of Staff, Baxter Carter, would also be appearing before the Workgroup momentarily to share some remarks about SB 575 on Senator Mason's behalf.

Ms. Budd then provided the tentative meeting dates for the next three Workgroup meetings and shared the anticipated work plans for each meeting. She noted that the second meeting will be dedicated to receiving public comment and presentations from stakeholders and other interested parties on both bill. At the third meeting, the plan is for the Workgroup to consider and discuss all of the presentations, testimony, and written comments and other information that it has received up to that point and begin developing its findings and recommendations on both bills. Finally, at the fourth meeting the plan is for the Workgroup to finalize its findings and recommendations and for staff to provide an overview of the final report for each bill. Ms. Budd concluded by reiterating that the final reports for both bills are due to the General Assembly on December 1, 2022.

V. Presentation on SB 550

The Honorable John J. Bell, Patron Senate of Virginia

Senator Bell began his remarks on SB 550 by thanking the Administration, the members of the General Assembly, and all of the stakeholders who have been involved with SB 550. He stated that what he and the stakeholders who support SB 550 are trying to do is simple – ensure that subcontractors who do quality work get paid for their work – and that the bill is crafted from laws that have been in existence for thirty or forty years in surrounding states. He acknowledged, however, that the bill was tweaked many times during Session became difficult and complicated due to all of the working parts and people involved. He stated that oftentimes complicated bills have unintended consequences, and he believes this happened with SB 550. As such, he feels that consideration of the bill by the Workgroup is the key to really getting the bill right. He stated that he is wide open to anything the Workgroup comes up with to make the bill better and concluded his remarks by thanking the Workgroup for their work.

VI. Presentation on SB 575

Baxter Carter, Chief of Staff to The Honorable T. Montgomery "Monty" Mason, Patron Senate of Virginia

Baxter Carter, Chief of Staff to Senator Mason, shared remarks on SB 575 on Senator Mason's behalf since he was unable to attend the Workgroup meeting. He stated that SB 575 was drafted with the goal of being a cost saving measure for the state. He emphasized that he anticipates the bill will have positive benefits for year to come. He shared that during discussion of the bill, his office was made aware early on that there may be some challenges with applying the provisions of the bill to medium-duty and heavy-duty vehicles. He stated that as the bill moved through the legislative process, concerns mounted about the availability of total cost of ownership (TCO) calculators for medium-duty and heavy-duty vehicles, how effective any such calculators that may exist are, and whether truck manufacturers are ready to be included in the process. He shared that it was for these reasons that medium-duty and heavy-duty vehicles were carved out of the bill and that the enactment clause was added to the bill directing the Workgroup to study these issues. He concluded his remarks by thanking the Workgroup for its efforts and expressing his confidence that the Workgroup will consider the issues thoroughly and produce quality recommendations.

VII. Discussion

Mike Tweedy, staff member of the Senate Finance and Appropriations Committee, asked whether it is common that contractors do not pay their subcontracts and if DGS knows the extent to which it happens. Ms. Gill responded that DGS does not have the information to determine whether it is common or not and noted that one of the purposes of the Workgroup is to gather such information.

Jason Saunders, representing the Department of Planning and Budget, mentioned that SB 550 seems to focus solely on payments between contractors and subcontractors specifically on construction contracts. He asked whether it is the intent of the Workgroup to also focus only on construction contracts, or if the Workgroup intends to look at other types of contracts as well. Ms. Gill responded that she believes it is appropriate to limit the Workgroup's discussion to construction contracts.

VIII. Public Comment

Matt Benka addressed the Workgroup on behalf of the Virginia Contractor Procurement Alliance, which represents many mid-size general contractors in Virginia. He stated that they are very opposed to SB 550 as it relates to private work and emphasized that remedies already exist for instances in which subcontractors are not paid by general contractors. He asked that the Workgroup recommend removing from the bill the portions of it that pertain to private contracts.

Patrick Cushing from Williams Mullen spoke to the Workgroup on behalf of AIA Virginia and ACEC Virginia. He shared that at this point in time his clients do not have a position on the underlying substance of SB 550 because they are uncertain as to whether the provisions of the bill apply to them. Mr. Cushing highlighted for the Workgroup some technical issues with the bill that lead to questions as to whether the terms "construction contract" and "contractor on a construction contract" include "design" and "architects

and engineers,” respectively. He noted that Va. Code § 11-4.6 contains definitions of “construction contract,” “general contractor,” and “subcontractor,” but those definitions are not included in the provisions of the bill amending Va. Code § 2.2-4354 in the Virginia Public Procurement Act. He inquired as to whether it was the intent of the bill’s patron and the stakeholders who advocated for the bill to have those definitions also apply to Va. Code § 2.2-4354. He reiterated that his clients, who include both firms that act as general contractors and those that act as subcontractors, truly cannot get to a position on the bill until those questions are answered regarding whether the provisions of the bill are intended to apply to them and some language clarifying that issue is added to the bill.

Steven Koerner, Vice President of Policy for AMPLY Power, spoke to the Workgroup on behalf of Advanced Virginia Economy regarding SB 575. He highlighted that often total cost of ownership (TCO) calculators do not take into account opportunities for managed charging of fleets. He stated that unlike many vehicles that have to charge at home or on the go, fleet charging can be managed to reduce overall cost for fleet operation and maintenance. He shared that in their experience, managed charging can reduce fuel costs by up to 85 percent compared to unmanaged charging. Mr. Koerner directed the Workgroup to a white paper that his organization put together that highlights the differences between managed and unmanaged charging and the cost savings that can be realized with managed charging. He emphasized that these cost savings can tip the balance in terms of comparing the total cost of ownership for internal combustion engine vehicles versus electric vehicles. He stressed that managed charging can also assist with managing duty cycles and can lead to higher overall availability of the vehicle.

Paul Denham, the President and CEO of Southern Air, a large mechanical, electrical, and plumbing contractor in Virginia that participates as a subcontractor on both public and private contracts, spoke to the Workgroup in support of SB 550. He stressed that companies like his are often insulated from the owner and are asked by the general contractor to not have any direct contact with the owner. As such, companies like his do not have a seat at the table from which to be able to determine whether there is a problem with the owner or general contractor, whether there is a problem with the project, and whether or not they will be paid. He emphasized that if another subcontractor or the general contractor on a project has a problem and the owner decides not to pay based on a contract breach or a contract problem that may have no relation to his company’s performance, the general contractor has the ability to not pay the subcontractors across the board because, in essence, the general contractor has not been paid by the owner. Mr. Denham acknowledged that the bill may need technical amendments, but he asked that the general intent of the bill be left as-is.

Kyler Hedrick, representing the Associated General Contractors of Virginia, stated that during the 2022 Regular Session of the General Assembly his association, which represents both general contractors and subcontractors, tried to get to a point where they could support SB 550, but they were unable to during the truncated timeframe of Session. He expressed his appreciation to the Workgroup for taking on the task of looking at the bill and seeing where it can be improved. He emphasized that his association’s three

goals are to protect general contractors, protect subcontractors, and preserve the freedom to contract.

Jack Dyer, President of the Virginia Contractor Procurement Alliance and Chairman of the Board of Gulf Seaboard General Contractors, spoke to the Workgroup on behalf of both organizations in opposition to SB 550. He began his remarks by noting that the provisions of SB 550 that amend § 2.2-4354 in the Virginia Public Procurement Act do not change the provisions of existing law that require a general contractors to pay their subcontractors within seven days after the general contractor has received payment from the state agency or local government for work performed by the subcontractor. As such, he stated that the Virginia Public Procurement Act still establishes a condition precedent for subcontractor payment. He then mentioned that several stakeholders raised the issues of change orders and retainage during Session and in subsequent comments to the Workgroup. He stressed that those issues are entirely different issues than the ones addressed by SB 550. Mr. Dyer then brought to the Workgroup's attention the fact that SB 550 will become effective on January 1, 2023, which is before the General Assembly will have an opportunity to make any changes to the bill. He concluded his remarks by stating that the bill has many problems and by expressing his confusion as to why the General Assembly felt they could overreach and get into the middle of a private contractual relationship between two private parties.

IX. Adjournment

Ms. Gill adjourned the meeting at 10:13 a.m. and noted that the next Workgroup meeting is scheduled for Thursday, July 28, 2022 at 9:30 a.m. in Conference Rooms C, D, and E in the James Monroe Building in Richmond, Virginia.

For more information, see the [Workgroup's website](#) or contact that Workgroup's staff at pwg@dgs.virginia.gov.
